

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Special Meeting
March 1, 1977
7:00 P.M.

Council Chambers
~~Municipal Auditorium~~

The meeting was called to order with Mayor Friedman presiding.

Roll Call:

Present: Mayor Friedman, Mayor Pro Tem Snell, Councilmembers
Himmelblau, Hofmann, Lebermann, Linn, Trevino

Absent: None

PUBLIC HEARING ON PROPOSED SETTLEMENT WITH
LOVACA GATHERING COMPANY

Mayor Friedman stated that this was a called Special Meeting for the purpose of a public hearing on the proposed settlement with LoVaca Gathering Company.

Mayor Friedman then opened the public hearing scheduled for 7:00 p.m. in the Municipal Auditorium by stating that there would be no decision made by the Council that night and that the discussion was only on the merits of the proposal. He pointed out that regardless of what happened with the proposal, gas prices would not be going down to the 1973 or 1974 levels. He said that if a settlement is reached in the courts, it would simply assure a stability of supply to the City.

MR. DON BUTLER, rate consultant for the City, retraced some of the history of the situation with LoVaca. He indicated that the City was currently in litigation over the issue. He introduced Mr. Cullen Smith and Ms. Sue Step, attorneys acting as co-counsel in the law suit which the City has pending in Waco against Coastal States and LoVaca Gathering Company. He stated that in 1962, the City signed its first contract with Coastal States. Prior to that time the City of San Antonio had entered into a contract and at about the same time the Lower Colorado River Authority (LCRA) also entered into a contract with the company. Austin represented about 6% of the total demand from Coastal States. In 1963, the contract was assigned from Coastal States to LoVaca Gathering Company. The City agreed to this as long as Coastal States would remain liable

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under the contract. In 1969 and 1970, Coastal States and LoVaca started dealing off gas to other parties that were willing to pay a higher price. He stated that this was the beginning of the problem. There was no action on the part of the Railroad Commission to scrutinize or regulate the operations of the companies. In 1971 rumors of possible shortages in the Coastal States system began to circulate. Austin along with other consumers began an effort to investigate the rumors but Coastal States was not receptive to giving access to their records. They were interested in renegotiating their contracts. In 1973, LoVaca filed a case with the Railroad Commission asking them to review, revise and regulate the contracts which it had with its some 400 customers. In September, 1973, the Railroad Commission entered an interim order which provided that LoVaca's contracts would be revised so that they would receive the price of gas at the well-head and a transportation charge of \$.05 per million cubic feet. The management of Coastal States/LoVaca began to run the cost of gas out of sight because they were now able to pass all gas cost on to the customers. In 1974, the City sent a letter to the Railroad Commission warning them of many of the things that were going to happen such as higher gas prices, possible Federal action and the events that took place under the management of Coastal States and LoVaca. The warnings went unheeded by the Railroad Commission. In early 1974, Mr. Walter Winlett, Director of the Gas Utilities Division, who acted as examiner in the case, issued a report in which he recommended that the Railroad Commission allow an increase to LoVaca but there be set up a fund whereby Coastal States would in effect be required to participate in the damages which the customers were having to pay for.

The recommendation was never acted upon by the Railroad Commission. In 1973, Austin, San Antonio, LCRA and others asked the Commission to send the gas back that had been reallocated to other parties. The Railroad Commission refused to take action, and Judge Herman Jones, who heard the case on appeal, called the inaction of the Commission a cop-out. The case was then appealed to the State Supreme Court. The Court held that even though the Commission did have the authority to look at certain transactions of other gas utilities, it did not have to do so and it was within its discretion not to act. At the same time, damage suits were filed by a number of customers. Mr. Butler stated that Austin was currently involved in a suit in Houston which was trying to get the gas that was dealt off in the early 1970's reallocated. Only one damage suit has been brought to trial, so far, and that was the LCRA suit. The suit was successful, but at the Court of Civil Appeals it was held that LCRA could not collaterally attack the action of the Railroad Commission. In other words, it could not reverse the decision of the Commission by means of a damage suit. The case is now in appeal before the State Supreme Court. Mr. Butler stated that the futility of the suits had to be recognized because the damage claims against Coastal States amounted to approximately \$2.5 billion, and the entire corporation is only worth \$400 million. He said that the customers have not moved forward in an effort to resolve the matter. He said that if the suits were successful, it would mean bankruptcy for the company. The company would then have to go into the market to buy natural gas and would probably pay a premium for it. He stated that the price of gas would not go down but that the most that could be achieved would be some stability of supply.

Mr. Butler then went into the proposed settlement plan. The plan has evolved over a period of three years. The settlement called for the creation of a new company with a value of \$240 million that would be spun off the parent company, Coastal States. The company would consist, essentially, of the utility

operations of Coastal States. The equity of the new company would have certain preferred and common stock, a portion of which would be transferred to a settlement trustee for the customers. The preferred would be in the amount of approximately \$115 million to be liquidated over a period of seven years, the receipts of the liquidation being passed on to the various customers. Also, the trustee would receive about 1.5 million shares of Coastal States Gas Corporation stock, representing an estimated book value of about \$20 million. The trustee would receive certain common stock of the new company, shares of which would have otherwise gone to stockholder Oscar Wyatt. Another 1.5 million shares of spin off to the new company amounting to about \$8 million. The trustee would be appointed by the 200th Judicial District Court in Travis County and he would vote the common stock and the preferred stock. The initial board of the new company would be made up of the President of LoVaca, independent members of the LoVaca appointed by the Court, and the majority of the board members coming from the various principal cities served by LoVaca.

There would also be the payment of promissory notes in the value of \$183 million which would give the company working capital. This would be payable over a period of 15 years. Coastal States Gas Corporation would be obligated to enter into a gas search program where it would spend not less than \$180 million, plus or minus some \$50 million depending on the amount they might discover over 15 years to develop new gas reserves. There would be certain discounts from the market price for natural gas which might be developed and dedicated under the gas search program of which could possibly provide some rate relief. Mr. Butler stressed that this was not a certainty. He stated that certain lignite property of Coastal would be transferred to the new company and there would be an option in certain electrical generating companies.

He stated that these were the highlights of the development plan which was drawn up as a consensus among the effected customers. He stated that it was imperative that the Southern Union Gas Company in Austin be required to pass on all the benefits to the rate-paying customers rather than being able to retain them as a part of any profit to the share holders. Councilmember Trevino asked Mr. Butler if the majority of the board members would be appointed by the customers. Mr. Butler stated that the members would be appointed by the Judge consisting of representatives from the various cities served by LoVaca.

Mayor Friedman asked if there was a representative from the Southern Union Gas Company present and there was not. The Mayor then called Mr. Phillip Parry to speak before the Council.

MR. PHILLIP PARRY, a resident of 3200 Beverly Road, pointed out that Mr. Butler had stated that the total worth of LoVaca was \$400 million and that the worth of the new proposed settlement company was only \$240 million. He stated that since pending suits against the company totaled to some \$2.5 billion, this was not a very good trade-off. He felt that the company should pay what they owe and should not be allowed to keep \$160 million worth of the company for themselves. He also felt that they should not be allowed to keep the refinery located in Corpus Christi. He stated that he did not think the problem could be dealt with on a State or local level. Mr. Perry cited the Public Utility Act of 1935 which gives the Securities and Exchange Commission the supervisory authority over the sale of public utility property and the organization or merger of such properties. He said that the agreement they were about to enter into had to meet approval from the Securities and Exchange Commission. Mayor Friedman stated that the whole

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arrangement would be conditional upon all regulatory agencies giving their approval. Mr. Perry questioned why on a certain day in 1974, the price of gas jumped from 7 cents - 25 cents up to \$1.90 per thousand cubic feet. He stated that someone was needed to investigate the problem.

MR. DANIEL S. HENSHAW of 5900 Highland Hills Terrace spoke before the Council. Mr. Henshaw asked what was the alternative to the settlement with LoVaca if the company was to go bankrupt. Mayor Friedman stated that should the company go bankrupt, it would become more difficult to acquire the gas that is necessary to service its customers. This would require wholesale interruptions of service to all their customers, including the City of Austin, as well as significant increases in prices. He stated that if the company did not go bankrupt, the supply would be a lot more certain but the price of gas would not be going down. Mr. Butler stated that this was correct and that no matter what the outcome of the law suits, the company would still be obliged to pay the price of gas at the well-head and these prices have already been driven up. He said that a bankrupt company would have difficulty obtaining gas at the well-head and would probably have to pay a premium for it. Mr. Henshaw indicated that if the current management were replaced, even if his rate bill did not go down, this would be some consolation to him. Mayor Friedman pointed out that this was part of the settlement, that the company be taken away from all of those who have treated the customers unkindly. The Mayor stated that part of the settlement stipulated that the company should not benefit from money made on the sale of gas in the northeast. Mr. Henshaw asked if the Council was in favor of the Railroad Commission being taken out of the picture entirely. Mayor Friedman did not speak for the Council but said himself that he felt anything would be better than the Railroad Commission.

MR. JACK HOPPER, a consultant to the City of Austin, spoke before the Council. He felt that there was something wrong with the proposed settlement and said that he was going to be very scrutinizing of the proposal. He felt that it was a matter of speculation as to the fact that a bankrupt company would have to pay a premium for gas at the well-head. He suggested that the matter be drawn out as long as possible so that the stock value of the company would be hurt. He felt that this would be the only way in which the City would realize any satisfaction in the issue.

(A Summary of Settlement and Reorganization Plan for Lo-Vaca Gathering Company, Coastal States Gas Producing Company, Coastal States Gas Corporation, Oscar S. Wyatt, Jr., and the Customers of Lo-Vaca Gathering Company is on file with the City Clerk's Office.)

ADJOURNMENT

The Council adjourned at 7:55 p.m.

ATTEST:

Grace Monroe
City Clerk

APPROVED

Alvin M. Friedman
Mayor